IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

Crl.Rev.Pet.No. 74 of 1998()

CRA.108/1995 of II ADDL.SESSIONS COURT, KOLLAM
CC.792/1991 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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REVN. PETITIONER(S):

KRISHNA PILLAI MAHADEVAN PILLAI,
CASHEW FACTORY NO.68,
VADAKKEVILA, KERALA CASHEW DEVELOPMENT CORPORATION
FROM SREERAGAM VEEDU, THEKKEVILA CHERI,
MUNDAKKAL VILLAGE.

BY ADV. SRI.PRASAD MATHEW
SRI.T.C.SAMUEL
SMT.BEENA JOHN

RESPONDENT(S):

STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

PUBLIC PROSECUTOR SRI.C.K.SURESH.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 27/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

CRL.R.P.NO.74 of 1998

Dated this the 27th day of February, 2007

O R D E R

Revision petitioner was convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for three months by the Magistrate Court. In appeal filed by the revision petitioner, the conviction was confirmed, but the sentence was modified to undergo simple imprisonment for six months and to pay a fine of Rs.1000/- and in default to undergo simple imprisonment for one month. The said conviction and sentence are challenged in this revision.

2. According to the prosecution, revision petitioner was working as a watcher of the Cashew Factory No.68, belonging to the Kerala Cashew Development Corporation. On the crucial night on 4.9.1991 at 12 'O' clock in the midnight, he removed some articles belonging to the Cashew Factory over the wall to outside. After his duty at 1 a.m, he sought permission from PW2 the special watcher to go out, on the pretext that one of his relatives died and he wanted to go home. He went to the eastern side instead of the western side, where his house is situated and the watcher on suspicion,

waited at the gate. He found the accused carrying a sack on the cycle.

3. The petitioner was questioned by PW2, when he confessed that he had removed the article from factory. Pws 3 and 4 were also present at the factory and they were also brought to the scene. He was detained in the factory until the Manager came on the next morning at about 8 a.m. Pw1 is the Manager to whom the accused confessed the guilt. After consultation with the Group Manager, a complaint was lodged by PW2 before the Police at 12.15 p.m on 5.9.1991. The first information statement is Exhibit P1. Investigation was conducted and the articles were seized under Exhibit P3 mahazar. F.I.R is Exhibit P4 and charge sheet was lodged against the petitioner under Section 381 of IPC.

4. To prove the prosecution case, PW1 to PW6 were examined and Exhibits P1 to P4 were marked. MO1 to MO3 were also marked. MO1 was the sack, MO2 series were the parts of expeller machines and MO3 was the cycle of the accused which was used for carrying the stolen articles. DW1 is examined on behalf of the accused. On an appreciation of evidence, the trial court found that the prosecution proved its case beyond reasonable doubt. In appeal also

those findings were confirmed.

5. On going through the records and the judgments, it is clear that the accused was not prosecuted for committing theft of MO1 and MO2 series which belonged to the Cashew Factory No.16. The stolen articles belonged to the Kerala Cashew Development Corporation. The said factory was working under the Kerala Cashew Development Corporation. In any theft case, possession of the articles is quite relevant. It is only if a property is moved out of the possession of any person without his consent that an offence of theft is committed.

6. The court below held that on going by the evidence of PW1 to PW4, MO2 series belonged to the factory No.16 of the Kerala Cashew Development Corporation and that those articles were found in a sack in possession of the accused by PW2. This finding cannot be supported in the light of the evidence given in this case. PW1 himself did not say that the stolen article belonged to the Kerala Cashew Development Corporation. He only stated that the accused said that the article belonged to the factory. PW2 was silent about the ownership or possession of the stolen article.

7. In fact, while PW2 was cross-examined, he stated that he

knew all the articles belonging to the Corporation and as the Manager he had signed for receipt of such articles in a register and that he can produce the same. But, the police had not asked him to produce the same. Such register or any record, which will prove that the article belonged to the factory, had not been seized or produced in court. PW1 also stated that when he took charge, he had not signed in the inventory register. That being so, the oral evidence of PW1 alone will not establish that the alleged stolen articles belonged to the factory. The lower court, therefore, erred in holding that MO2 series belonged to Factory No.68.

8. Now coming to the evidence of PW2, I find that he is the star witness of the prosecution. He deposed before the court that the stolen article belonged to one Krishna Pillai and that the factory belonged to Krishna Pillai. This evidence is contradictory to the prosecution case that the article belonged to the Kerala Cashew Development Corporation. Therefore, the evidence of PW2 also is inconsistent with the prosecution and the court committed a mistake in holding that the evidence of PW2 would prove that the stolen article belonged to Factory No.68 of the Kerala Cashew Development Corporation.

9. Now coming to the evidence of PW3 and PW4 also it can be seen that their evidence does not disclose that the stolen article belonged to the factory. The very foundation on conviction is therefore shaken and it cannot be sustained, since the prosecution failed to prove that the article belonging to the factory were removed by the accused without the consent of any person who was in possession of those articles. The lower court also found that the evidence of PW1 does not discredit the evidence of PW2 to PW4. This finding also cannot be sustained, since the evidence of PW2 to PW4 is materially shaken by the evidence of PW1. Even the worth of the prosecution case as a whole is shaken by what has come out from the evidence of PW1.

10. According to prosecution, the crime was registered on 5.9.1991 at 12.50 p.m, as per the first information statement lodged by PW2. Exhibit P4 is the F.I.R. It is only after the said registration of a crime that the recovery of the material objects, arrest of the accused etc. were allegedly effected. But the very origin of the FIR is doubtful. Some serious doubt is cast regarding the legitimate origin of the first information statement and the registration of the FIR on the basis of which the investigation in this case has

commenced. I shall state the details.

11. PW1, the Manager of the factory gave evidence in the cross-examination that he had not given information to the police, but Bhavanandan, the Group Manager informed the Manager. So, as per the evidence of PW1, the first information statement was given by the Group Manager, who was not examined in this case.

12. In this connection, it is also relevant to note that PW4, a clerk attached to the factory was sleeping in the factory in the crucial night. He was also available in the morning. He supported the prosecution and gave evidence in cross-examination that the Head Constable and the Police Constable came to the spot to the factory on 5.9.1991 at 10 a.m. He also stated that the Assistant Personal Manager, Appukuttan Pillai and the Group Manager were also available along with the police party.

13. It is also stated by PW4 that police came in the vehicle belonging to the Corporation. Therefore, the evidence of prosecution itself reveals that not only that a first information statement must have been given prior to the registration of the crime and police party had acted prior to the alleged registration of the crime in this case. The evidence adduced in this case itself cast

a serious doubt regarding the legitimate origin of the FIR. It appears that the things had happened not as alleged by the prosecution. The case of the accused is that he was falsely implicated in an offence of theft, since the management was motivated against him, as he has formed a new union in the factory.

14. Taking all these facts into consideration, I find that prosecution failed to prove its case beyond reasonable doubt and hence accused is entitled for an acquittal. The conviction and sentence passed against petitioner are not sustainable.

15. In the result, the conviction and sentence passed against the petitioner are set aside. The revision petitioner is found not guilty of offence under Section 381 IPC and he is acquitted of the said offence. He is set at liberty forthwith. MO1 which admittedly belongs to the petitioner shall be released to the revision petitioner. The order to confiscate the same is also set aside.

The Revision Petition is allowed.

K.HEMA, JUDGE

vgs.